

**WRITE IT OR RISK IT
NEW YORK REQUIRES COMMISSION AGREEMENTS TO BE IN WRITING**

Recent changes to the New York State Labor Laws¹ require all employers to have written agreements with their commissioned salespersons. The writing must be signed by both the employer and the employee. This new requirement took effect October 16, 2007.

The definition of a commissioned salesperson is fairly broad, and includes any employee whose principal activity is the selling of any goods, wares, merchandise, services, real estate, securities, insurance or any article or thing and whose earnings are based *in whole or in part* on commissions. The term commissioned salesperson does not include an employee whose principal activity is of a supervisory, managerial, executive or administrative nature.

This law applies to all employers, regardless of the industry in which they are involved.

The written agreement must include no less than the following:

- A description of how wages, salary, drawing account, commissions and all other monies earned and payable shall be calculated.
- Where the agreement provides for a recoverable draw, the frequency of the reconciliation.
- Details pertinent to payment of wages, salary, drawing account, commissions and all other monies earned and payable, in the case of termination of employment by either party.

The penalty for failing to follow this modification to the Labor Laws is significant. If the employer fails to provide the fully executed, written agreement as prescribed, it will give rise to a presumption that the terms of employment that the commissioned salesperson has presented to the court or to the Department of Labor are the agreed upon terms of employment. In other words, the law will assume that the employee's version of the agreement is the correct one and the employer will have to provide sufficient evidence to prove the employee wrong. These written agreements must be retained by the employer for a minimum of three (3) years.

¹ New York Labor Law §191(c)

Even those employers who already have written agreements are at risk. They should review their agreements to ensure that they fulfill these new, rigorous requirements as well as the existing requirements (e.g. when payments must be made).

We can assist you in preparing new agreements and in reviewing your existing agreements to determine if they comport with the new requirements. We can help you determine who is covered by these laws and who is not. We can also discuss with you other provisions that could be drafted in the agreements to provide further protection to your company, covering such areas as confidentiality, employment-at-will and restrictive covenants.

Moritt Hock Hamroff & Horowitz LLP is a broad based corporate law firm with 35 lawyers and a staff of paralegals. The firm has extensive experience in litigation; creditors' rights and bankruptcy; real estate law; trusts, estates & taxation; direct marketing, advertising & new media; intellectual property & unfair competition; employment law; healthcare law; corporate & securities law; equipment & vehicle leasing; financial services & secured lending; and not-for-profit law.

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